

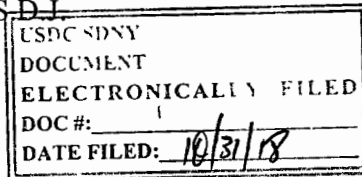
**Michael Faillace & Associates, P.C.**

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December 4, 2017

**MEMO ENDORSED****BY ECF**The Honorable Paul G. Gardephe, U.S.D.J.  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, NY 10007*The parties' settlement agreement is approved by the Court.***SO ORDERED:***Paul G. Gardephe*  
**Paul G. Gardephe, U.S.D.J.****Re: Medina Cruz et al v. Bagel Boss of Murray Hill Inc. et al**  
**Case No. 16-cv-8269 (PGG) (DCF)***Oct. 31, 2018*

Your Honor:

I am attorney for Plaintiffs in the above-referenced matter. I write, pursuant to your Honor's Order dated November 28, 2017. For the court's convenience, we attach our excel spreadsheet, containing our damage calculations. (Exhibit A)

Plaintiff Benjamin Medina Cruz was employed by Defendants from January 1, 2016 until August 2016 and typically worked 49 hours each week. He alleges that he was paid \$8 per hour. Plaintiff Jose Arriaga Galindo was employed by Defendants from November 2015 until on or about April 2016, and then again from August 2016 until approximately September 23, 2016. Plaintiff Arriaga alleges that he typically worked from 40 -54 hours each week, depending on the period of time in question, and was paid \$8 per hour.

In order to calculate Plaintiffs' damages, we calculated what each Plaintiff would have received if they had been paid at the proper minimum wage and overtime rates. We subtracted the amount Plaintiffs actually received by the amount that we determined that they should have lawfully received in order to arrive at their "Underpayment per week." Because Plaintiffs were employed by Defendants for a short period of time, and are owed relatively modest underpayments, we calculate that, combined, Plaintiffs are owed back-wages of \$5,374.59. We also calculate that they would be owed liquidated damages, wage notice and wage statement violations, and prejudgment interest if we prevailed at trial.

Defendants dispute all allegations and planned to demonstrate that Plaintiffs were paid properly at all times. Furthermore, Defendants have expressed that they have financial difficulties which would make them unable to withstand a more substantial judgment. Although Defendants vehemently deny any liability and believe that Plaintiffs were properly paid for all hours worked, Defendants have agreed to the \$10,000.00 settlement sum because defending this action would exceed this amount.

Furthermore, Plaintiffs have agreed to the settlement sum of \$10,000 because this amount would allow Plaintiffs to recover all of their back-wages, as well as a portion of their liquidated

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damages, and attorney's fees, without expending the time and resources necessary to take this matter to trial. This settlement would also avoid any potential difficulties in enforcing a possible judgment. We therefore believe that this sum is a reasonable compromise by the parties.

For these reasons, as well as the fairness analysis contained in our letter dated November 6, 2017 (Docket #: 29), we hope that the Court finds the agreement to be fair and reasonable.

Thank you for your time and attention to this matter.

Respectfully Submitted,

/s/ Marisol Santos

Marisol Santos, Esq.

MICHAEL FAILLACE & ASSOCIATES, P.C.

*Attorneys for Plaintiffs*

cc: Jay L. Yackow, Esq. (by ECF)  
*Attorney for Defendants*

For Settlement Purposes Only

Bagel Boss

Plaintiff	Pay Period				Minimum Wage			Paid Wages			Unpaid Wages & OT		
	Start	End	Weeks	Hours Per Week	Minimum Wage Rate	Minimum Overtime (OT)	Lawful Weekly Pay	"Credited" Weekly Pay	Regular Hourly Pay Rate	Hourly OT Pay Rate	Underpayment Per Week	Total Unpaid Wages & OT	Liq. Damages on Wages & OT
Benjamin Medina Cruz	1/1/2016	8/15/2016	32	49	\$ 9.00	\$ 13.50	\$ 481.50	\$ 392.00	\$ 8.00	\$ 12.00	\$ 89.50	\$ 2,902.36	\$ 2,902.36
												\$ 2,902.36	\$ 2,902.36
Jose Ariaga Galindo	11/15/2015	12/31/2015	7	52.5	\$ 8.75	\$ 13.13	\$ 514.06	\$ 420.00	\$ 8.00	\$ 12.00	\$ 94.06	\$ 618.13	\$ 618.13
	1/1/2016	4/15/2016	15	52.5	\$ 9.00	\$ 13.50	\$ 528.75	\$ 420.00	\$ 8.00	\$ 12.00	\$ 108.75	\$ 1,631.25	\$ 1,631.25
	8/15/2016	9/23/2016	6	40	\$ 9.00	\$ 13.50	\$ 360.00	\$ 320.00	\$ 8.00	\$ 12.00	\$ 40.00	\$ 222.86	\$ 222.86
												\$ 2,472.23	\$ 2,472.23
<b>TOTAL DAMAGES</b>												\$ 5,374.59	\$ 5,374.59
NYLL - SOL	10/25/2010												
NYLL Amendment Date	4/9/2011												
FLSA - SOL	10/24/2013												
Filing Date	10/23/2016												
Today's Date	2/22/2017												
1 This chart is based upon preliminary information and the expected testimony of Plaintiffs. 2 Plaintiffs reserve the right to correct or amend this chart. 3 This Chart was prepared without the benefit of discovery, or the benefit of Defendants' required wage and hour records under the FLSA. 4 Where plaintiff was paid a salary, there is a rebuttable presumption that the salary was meant to cover 40 hours of work. See Berrios													

For Settlement Purposes Only

Bagel Boss

Plaintiff	Pay Period		Spread of Hours			Pre-Judgment Interest		Other Claims			TOTALS
	Start	End	SOH Days per Week	Unpaid SOH Pay	Liq. Damages on Unpaid SOH Pay	PJI on Wages	PJI on SOH	Wage Notice	Wage Statement	Unpaid Final Check	
Benjamin Medina Cruz	1/1/2016	8/15/2016	0	\$ -	\$ -	\$ 218.32	\$ -	\$ 5,000.00	\$ 5,000.00	\$ -	\$ 16,023.04
				\$ -	\$ -	\$ 218.32	\$ -	\$ 5,000.00	\$ 5,000.00	\$ -	\$ 16,023.04
Jose Ariaga Galindo	11/15/2015	12/31/2015	0	\$ -	\$ -	\$ 67.45	\$ -	\$ 5,000.00	\$ 5,000.00	\$ 736.00	\$ 12,039.70
	1/1/2016	4/15/2016	0	\$ -	\$ -	\$ 147.24	\$ -				\$ 3,409.74
	8/15/2016	9/23/2016	0	\$ -	\$ -	\$ 9.46	\$ -				\$ 455.17
				\$ -	\$ -	\$ 224.15	\$ -	\$ 5,000.00	\$ 5,000.00	\$ 736.00	\$ 15,904.62
<b>TOTAL DAMAGES</b>				\$ -	\$ -	\$ 442.47	\$ -	\$ 10,000.00	\$ 10,000.00	\$ 736.00	\$ 31,927.65
NYLL - SOL	10/25/2010										
NYLL Amendment Date	4/9/2011										
FLSA - SOL	10/24/2013		A and NYLL.								
Filing Date	10/23/2016		v. Nicholas Zito Racing Stable, Inc., 849 F. Supp. 2d 372, 387 (E.D.N.Y. 2012).								
Today's Date	2/22/2017										